



SDMS DocID

269685

## Superfund Records Center

SITE: Ottati &amp; Goss

BENEF: 8.7

OTHER: 269685

NH DEPT OF  
ENVIRONMENTAL SERVICES

OCT 10 2006

RECEIVED

## NOTICE OF ACTIVITY AND USE RESTRICTION

Site: Ottati & Goss/Great Lakes Container Corp. (a/k/a Kingston Steel Drum) Superfund Site  
120 Route 125  
Kingston, New Hampshire  
Rockingham County Tax Map R13, Lot 14

NHDES Site No.: 199004006

This Notice of Activity and Use Restriction ("Notice") is made on this sixth day of October, 2006 by the State of New Hampshire, together with its successors and assigns (collectively "Owner").

## WITNESSETH

**WHEREAS**, in May 1980, the United States on behalf of the U.S. Environmental Protection Agency ("EPA") brought a lawsuit in the United States District Court for the District of New Hampshire under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, and thereby sought the cleanup of the Ottati & Goss/Great Lakes Container Corp. (a/k/a Kingston Steel Drum) site in Kingston, New Hampshire;

**WHEREAS**, the State of New Hampshire (the "State") intervened in the EPA's lawsuit, raising claims under RCRA, CERCLA, and the State of New Hampshire Hazardous Waste Management Act, NH RSA chapter 147-A;

**WHEREAS**, a Consent Decree settling the EPA's lawsuit (Civil No. 80-225-L) and a consolidated matter (Civil No. 89-400-D) was approved and entered by the United States District Court for the District of New Hampshire on December 22, 1993 (as modified July 19, 1994);

**WHEREAS**, the original remedy for the Kingston site, set forth in the January 16, 1987 Record of Decision ("ROD"), required a soil cleanup level within EPA's acceptable risk range for residential uses and therefore did not call for institutional controls;

**WHEREAS**, a modified remedy, set forth in a September 28, 1999 Explanation of Significant Differences ("ESD"), was based on a change in future land use from residential to commercial, and requires the implementation of institutional controls to restrict the Property, identified on Tax Map R13 as Lot 14, to commercial use;

**WHEREAS**, by eminent domain proceedings the State ("Property Owner") is the owner in fee simple of part of the Kingston site, a certain parcel of land located at 120 Route 125 in Kingston, New Hampshire with the buildings and improvements thereon, identified on Tax Map R13 as Lot 14, recorded at the Rockingham County, New Hampshire Registry of Deeds at Book

plan # D 34820

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ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

3521, Page 1105, which is more particularly bounded and described in Exhibit A, attached hereto and made a part hereof, and which is depicted in plan B, attached hereto and made a part hereof, (the "Property").

**WHEREAS**, if the State transfers ownership of the Property the State will retain a grant of activity and use restrictions that will run with the land, which will include the activity and use restrictions included in this Notice. The grant will provide the State and EPA access to the Property to implement the CERCLA remedy and will permit the State and EPA, as a third-party beneficiary, the right to enforce the terms of the grant in order to protect any components of the CERCLA remedy on the Property and to protect human health and the environment by reducing the risk of exposure to contaminants.

**WHEREAS**, the State, acting by and through the Department of Environmental Services ("NHDES"), and the EPA have reviewed and approved this Notice of Activity and Use Restrictions for the Property,

**NOW, THEREFORE**, notice is hereby given that the Activity and Use Restrictions ("AUR") set forth below apply to the Property:

1. **Permitted Activities and Uses Set Forth in the AUR.** No significant risk from soil exists to human health, safety, or welfare or to the environment, under current conditions and for any foreseeable period of time, so long as the following activities and uses occur on the Property:
  - (a) Commercial or industrial uses as permitted by the Town of Kingston Zoning Ordinances or otherwise by the Town of Kingston to include walkways and parking;
  - (b) Activities conducted within the Property that do not excavate or disturb subsurface soil below six (6) feet, as long as the final restored grade retains two (2) feet of clean soil over the contaminated soil. Final as built plans showing all modifications to the property's grading will be submitted to NHDES and EPA and a copy recorded in the Rockingham County, New Hampshire Registry of Deeds as an amendment to this Notice of Activity and Use Restriction;
  - (c) Groundwater remediation activities, including but not limited to on-site pumping and treating of groundwater, undertaken as a means to comply with the groundwater remediation requirements of the CERCLA remedy; and
  - (d) Such other activities and uses, which, in the opinion and concurrence by EPA and NHDES, shall present no greater risk or harm to human health, safety, or welfare or to the environment than the permitted activities and uses set forth herein.

2. **Restricted Activities and Uses Set Forth in the AUR.** Activities and uses that, if implemented at the Property, may result in a significant risk of harm to human health, safety, or welfare or to the environment or present a substantial hazard, are prohibited as follows:

- (a) Any activity, including, but not limited to, excavation associated with underground utility or construction work which is likely to disturb PCB (polychlorinated biphenyls) and/or VOC (volatile organic compounds) contaminated soil;
- (b) Use of the Property as a residence, school, nursery, recreational areas (such as parks or athletic fields) or any other use at which a child's presence is likely or intended;
- (c) Any activity including, but not limited to, relocation of PCB and/or VOC contaminated soil unless such activity is first evaluated and approved by EPA and NHDES; and
- (d) Installation of groundwater wells or any removal or exposure to groundwater (except for remediation purposes) unless such activity is first evaluated and approved by EPA and NHDES.

3. **Obligations and Conditions.** Obligations and Conditions to be undertaken and maintained at the Property by the State authority which is managing the Property to maintain a condition of no significant risk as set forth in this Declaration shall include the following:

- (a) A Soil Management Plan prepared by a qualified Environmental Consulting Firm and approved by the NHDES and the EPA prior to commencement of any subsurface activity that may involve impact to PCB and/or VOC contaminated soil that would result in direct contact to humans or present a greater risk to the environment.
- (b) A site specific Health and Safety Plan prepared by a Certified Hygienist or other qualified health and safety professional, in accordance with 29 CFR 1910.120, prior to commencement of any subsurface activity that may involve impact to PCB and/or VOC contaminated soil. The plan must clearly identify the location of the PCB and/or VOC contaminated soils and specifically identify the types of personal protective equipment, monitoring devices, and engineering controls necessary to ensure that workers and others at the Property are not exposed to PCBs and/or VOCs through dermal contact, ingestion, and/or inhalation of particulate dusts.

- (c) The seeded top-soil barrier must be maintained to ensure that PCB and/or VOC contaminated soils beneath the barrier remain inaccessible.
- (d) PCB and/or VOC contaminated soil may not be relocated or moved unless first evaluated by an Environmental Consulting Firm, which shall render an opinion that such relocation or movement of the soil is in accordance with the Soil Management Plan (if applicable) and is not inconsistent with maintaining a condition that is protective of human health and the environment, and approved by the NHDES and the EPA.
- (e) Prior to commencement of any subsurface activity that may involve extraction or release of contaminated groundwater that could result in direct contact to humans or present a greater risk to the environment, a human health and ecological risk assessment must be conducted by a qualified Environmental Consulting Firm and approved by the NHDES and EPA.
- (f) If CERCLA actionable risks are identified, a site specific Groundwater Management Plan must be prepared by a qualified Environmental Consulting Firm and approved by the NHDES and the EPA. In addition, a site specific Health and Safety Plan prepared by a Certified Hygienist or other qualified health and safety professional, in accordance with 29 CFR 1910.120, must be approved by the NHDES and the EPA prior to commencement of any subsurface activity that may involve release or exposure to contaminated groundwater. The plan must clearly identify the types of personal protective equipment, monitoring devices, and engineering controls necessary to ensure that workers and others at the Property are not exposed to contaminated groundwater through dermal contact, ingestion, and/or inhalation.

4. **Emergency Procedures.** In the event of any emergency or condition that may result in significant risk or harm to human health from exposure to site contaminants, the State authority which is managing the Property shall:

- (a) Promptly notify NHDES and EPA of such emergency or condition.
- (b) Limit disturbance of PCB and VOC contaminated media to the minimum reasonably necessary to adequately respond to such emergency or condition.
- (c) Implement appropriate precautions to reduce exposures to PCB and VOC contaminated media by workers at the Property and neighbors to the Property.

- (d) Engage the services of an Environmental Consulting Firm to supervise the preparation and implementation of a written plan, for review and approval by NHDES and EPA, for restoring the Property to a condition consistent with the AUR.
  - (e) Take precautions to limit disturbance of PCB and VOC contaminated media to the minimum necessary to respond to the emergency or condition.
5. **Proposed Changes in Activities and Uses.** The restricted activities and uses set forth above may be amended or modified upon mutual agreement by the NHDES and EPA. Any proposed changes in activities and uses at the Property that may result in a greater risk of exposure to PCBs and VOCs than currently exists at the Property shall be evaluated by the NHDES and EPA as to whether the proposed changes will present an unacceptable level of risk to human health and the environment. Approval by the NHDES and EPA shall be required before such proposed activity or use is commenced.
6. **Duration of Activity and Use Restrictions.** The activity and use restrictions set forth herein shall run with the land, and, pursuant to RSA 147-A:14 and A:14-A (Supp. 2003), and for the benefit of public health, safety, welfare, and environment of the State, the restrictions shall become binding upon successive owners of the Property or portions of the Property and shall remain in effect until the PCB and VOC soil contamination at the Property meets the applicable state and federal standards for any restricted activity or use.
7. **Termination of Activity and Use Restrictions.** The activity and use restrictions set forth herein may be terminated upon mutual agreement by the NHDES and EPA and upon a showing that these restrictions are no longer necessary to maintain the protection of human health and the environment.
8. **Recordation.** This Declaration of Activity and Use Restriction, any modifications or amendments, and any terminations are effective upon recordation of notice in the chain of title for the Property at the Rockingham County, New Hampshire Registry of Deeds. All recordation costs shall be the responsibility of the Property Owner. Owner shall provide certified copies of all AUR recorded instruments to NHDES and EPA within 60 days of recordation.
9. **Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer.** This Declaration of Activity and Use Restriction shall be incorporated either in full or by reference into the chain of title of all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the property or a portion thereof is conveyed. The notice of this instrument shall be substantially in the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ACTIVITY AND USE RESTRICTION, DATED \_\_\_\_\_, 2006, RECORDED IN THE PUBLIC LAND RECORDS DATED \_\_\_\_\_, 2006, AND RECORDED IN BOOK \_\_\_\_\_, PAGES \_\_\_\_\_ OF THE ROCKINGHAM COUNTY LAND RECORDS.**

10. **Notices.** Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

**To Property Owner and  
To New Hampshire Department of Environmental Services:**

Ottati & Goss Superfund Site State Project Coordinator  
New Hampshire Department of Environmental Services  
P.O. Box 95, 29 Hazen Drive  
Concord, New Hampshire 03302-0095  
(603) 271-3503

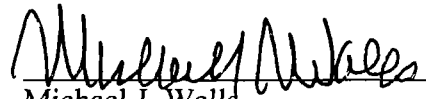
**To the United States Environmental Protection Agency:**

Ottati & Goss Superfund Site Remedial Project Manager  
United States Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100, MC HBO  
Boston, MA 02114-2023  
(617) 918-1335

Property Owner, the State of New Hampshire, hereby authorizes and consents to the filing and recordation of this Notice, which shall become effective upon approval of NHDES and EPA and recordation of this instrument at the Rockingham County New Hampshire Registry of Deeds in the chain of Title for the Property.

**WITNESSETH** the execution hereof under seal this 26<sup>th</sup> day of October, 2006.

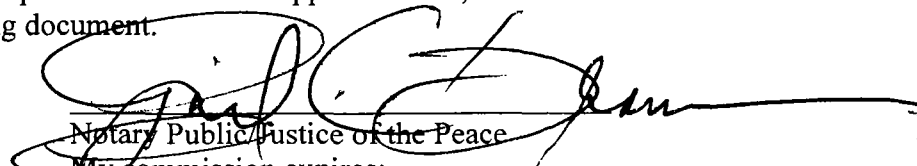
By: STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL  
SERVICES

  
Michael J. Walls  
Assistant Commissioner

THE STATE OF NEW HAMPSHIRE

Merrimack, SS.

On the 26 day of October, 2006, before me appeared Michael J. Walls, known to me (or satisfactorily proven) to be the person whose name appears above, and he/she subscribed his/her name to the foregoing document.

  
Notary Public/Justice of the Peace  
My commission expires:

GAIL C. FRASER, Notary Public  
My Commission Expires April 20, 2010

## **EXHIBIT A**

A certain tract or parcel of land situate on the westerly side of Route 125 in the Town of Kingston, County of Rockingham, New Hampshire, being Tax Map R13, Lot 14 owned by Great Lakes Container Corporation:

Beginning at a granite bound along the northwesterly right-of-way limit of New Hampshire Route 125, marking the southeasterly corner of the parcel and the northeasterly corner of land now or formerly of John Peter Sebetes;

Thence N 58° 12' 59" W, along land of said Sebetes, a distance of 458.93 feet to a galvanized iron pipe marking the northeasterly corner of land now or formerly of the Concord Realty Trust;

thence N 58° 00' 49" W, along land of said Concord Realty Trust and crossing a small brook, a distance of 409.34 feet to a point;

thence continuing along land of said Concord Realty Trust N 57° 26' 59" W, a distance of 85.40 feet to the southwesterly corner of the parcel marked by granite bound;

thence turning and running N 35° 57' 01" E, along land now or formerly of BBS Realty Trust, a distance of 267.40 feet to the northwesterly corner of the parcel marked by a galvanized iron pipe;

thence turning and running S 58° 12' 59" E along land of said BBS Realty Trust, a distance of 953.92 feet to a granite bound along the northwesterly right-of-way limit of Route 125, being the northeasterly corner of the parcel;

thence turning and running S 35° 57' 57" W along the northwesterly right-of-way of Route 125, a distance of 270.00 feet to the point of beginning.

containing 5.89 acres or 256,397 square feet, more or less.

Meaning and intending to describe the premises conveyed to the condemnee by deed of International Minerals and Chemicals Corporation dated August 25, 1976, and recorded in the Rockingham County Registry of Deeds at Book 2267, Page 1090 on October 5, 1976.



**EXHIBIT B**

**(Plan of Property)**



